



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

OCT 11 2007

Regulatory Branch (1145b)

SUBJECT: File Number 2006 – 400075S

Mr. Tim Steele
Sobrato Development Companies
10600 North De Anza Boulevard, Suite 200
Cupertino, California 95104-2075

Dear Mr. Steele:

This letter is written in response to your submittal of June 20, 2007 requesting confirmation of the extent of Corps of Engineers jurisdiction at the Newark Areas 3 and 4 site located south of Cherry Street, east of Mowry Ave, and west of Stevens Boulevard adjacent to Mowry Slough in the City of Newark,, Alameda County, California.

Enclosed is a map showing the extent and location of Corps of Engineers jurisdiction. We have based this jurisdictional delineation on the current conditions on the site as verified during a site visits performed by our staff on August 8 and 14, 2007. A change in those conditions may also change the extent of our jurisdiction. This jurisdictional delineation will expire in five years from the date of this letter. However, if there has been a change in circumstances that affects the extent of Corps jurisdiction, a revision may be completed before that date.

All proposed work and/or structures extending bayward or seaward of the line on shore reached by: (1) mean high water (MHW) in tidal waters, or (2) ordinary high water in non-tidal waters designated as navigable waters of the United States, must be authorized by the Corps of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403). Additionally, all work and structures proposed in unfilled portions of the interior of diked areas below former MHW must also be authorized under Section 10 of the same statute.

All proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. Section 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands.

Your proposed activity is within our jurisdiction and a permit will be required for your project. Application for Corps authorization should be made to this office using the application form in the enclosed pamphlet. To avoid delays it is essential that you enter the file number at the top of this letter into Item No. 1 of the application. The application must include plans showing the location, extent and character of the proposed activity, prepared in accordance with

the requirements contained in this pamphlet. You should note, in planning your project, that upon receipt of a properly completed application and plans, it may be necessary to advertise the proposed work by issuing a Public Notice for a period of 30 days.

Since an Individual Permit will probably be required to authorize your project, it will be necessary for you to demonstrate to the Corps that your proposed fill is necessary because there are no practicable alternatives as outlined in the U.S. Environmental Protection Agency's Section 404(b)(1) Guidelines. A copy of the Guidelines is enclosed to aid you in preparation of this alternative analysis. You are advised to refrain from starting your proposed activity until we complete our review of your application and issue you the required authorization. Commencement of work before you receive our notification will be interpreted as a violation of our regulations.

Our Nationwide Permits and Regional General Permits have already been issued to authorize certain activities provided specified conditions are met. Your completed application will enable us to confirm that your activity is already authorized. You are advised to refrain from starting your proposed activity until we make a determination that the project is covered by an existing permit. Commencement of work before you receive our notification will be interpreted as a violation of our regulations.

You are advised that the Corps has established an Administrative Appeal Process, as described in 33 C.F.R. Part 331 (65 Fed. Reg. 16,486; March 28, 2000), and outlined in the enclosed flowchart and "Notification of Administrative Appeal Options, Process, and Request for Appeal" form (NAO-RFA). If you do not intend to accept the approved jurisdictional determination, you may elect to provide new information to the District Engineer for reconsideration or submit a completed NAO-RFA form to the Division Engineer to initiate the appeal process. You will relinquish all rights to appeal, unless the Corps receives new information or a completed NAO-RFA form within sixty (60) days of the date of the NAO-RFA.

Should you have any questions regarding this matter, please call Katerina Galacatos of our Regulatory Branch at (415) 503-6778. Please address all correspondence to the Regulatory Branch and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available online at <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,
ORIGINAL SIGNED
BY Mark D'Avignon
CHIEF, REG. BR., SOUTH SECTION
FOR
Mark D'Avignon
Chief, South Section

-3-

Enclosures

Copy Furnished:

CA RWQCB, Oakland, CA

CA SWRCB, Sacramento, CA

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95032

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